



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

LVO/144018

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2012, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit to issue a levy, a hearing was held on November 06, 2012, at Milwaukee, Wisconsin.

The issues for determination are:

- A. is Petitioner's appeal timely as to a 2009 notice of over issuance of child care benefits,
- B. whether Petitioner's appeal of a Department of Children and Families/Public Assistance Collection Unit notice of levy is timely and, if timely,
- C. whether there is any basis for remand of the levy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Keisha Love
MECA
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
- 2. Petitioner was sent a 'Public Assistance Collection Unit Levy Issued' notice dated August 17, 2012. It was sent to Petitioner at the above address. That informed Petitioner that the levy had been issued by the Department of Children and Families' Public Assistance Collection Unit to

seize any property up to the amount of the levy. The levy was noted to be \$6620.17. Finally, the notice indicated that a hearing could be requested but must be requested within 21 days of the date of the notice by sending a written request for a hearing to the Division of Hearings and Appeals. The Division's address was provided.

3. Petitioner was sent a computer-generated child care overpayment notice dated March 25, 2010 that indicated that Petitioner had been overpaid child care benefits for the period from October 1, 2009 through January 31, 2010 and in the amount of \$6573.92. That notice was sent to Petitioner at the above address. The Notice does contain appeal instructions.
4. Petitioner was sent a manually generated child care overpayment notice dated March 24, 2010 that informed Petitioner of the overpayment noted at Finding #3. That notice was sent to Petitioner at the above address. That notice also contains appeal instructions.
5. Petitioner was sent a repayment agreement for the child care overpayment that was dated April 2, 2010. That notice was sent to Petitioner at the above address.
6. Petitioner was sent two "dunning notices" dated May 4, 2010, June 2010 and July 2010 and those notices were all sent to Petitioner at the above address and relate to the overpayment claim noted herein.
7. The reason for the \$46.25 difference between the overpayment notices on the levy notice is that the levy notice as certified mailing costs added in.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. An appeal for the child care program must be filed within 45 days of notice of adverse action. *See Child Care Policy Manual, 2.5.0.; also see Wis. Admin. Code, § HA 3.04(3)*. The 2010 notices of child care overissuance were sent to the correct address and contain appeal instructions, noting the appeal deadline to be 45 days. No appeal was filed until the instant appeal on September 24, 2012. Thus this appeal is untimely as to the 2010 notice of child care overissuance.

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a levy, i.e., whether the department is proceeding against the correct individual and whether there have been prior payments of the debt, the appeal must be timely.

The Wisconsin Administrative Code, at *Wis. Admin. Code, § DCF 101.23 (10) (c)*, states that:

...

(c) *Service of levy and review when property levied.* 1. The department may collect the debt and the expenses of the levy by levy upon any personal property belonging to the debtor.

2. The department shall serve the levy upon the debtor and any 3rd party in possession of or obligated with respect to property or rights to property that is subject to levy by personal service or by any type of mail service that requires a signature of acceptance as provided in s. 49.195 (3n) (m), Stats. The debtor or 3rd party's failure to accept or receive service of the levy does not invalidate the levy.

3. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The levy is not stayed pending an appeal where property is secured through the levy.

...

Wis. Admin. Code, § DCF 101.23(10)(c).

The above makes apparent that the department is required to serve the levy by personal service or by mail service that generates a signature of acceptance. Further, failure to accept or receive service does not invalidate the levy but presumably there is a notice from the process server or the U.S. Postal Service that indicates the date of attempted service. Once the service is obtained or attempted, the appeal time limits begin to run. There is nothing in the record to indicate the date of service or attempted service. It is not possible, therefore, be certain that this appeal is untimely, although given the time between the date of the levy and the filing of this appeal (48 days) it would certainly seem that this appeal is untimely. Nonetheless, lacking certainty as to the date of service or attempted service this decision will proceed to the merits.

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to W-2 child care benefits) a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. *Wis. Adm. Code, §DCF 101.23(4)*. One method of collection that the department may utilize is the use of a levy under *Wis. Stat., §49.195 (3N)*. *Wis. Adm. Code, §DCF 101.23(10)(b)* provides as follows: “1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending *and the time for requesting a review has expired*, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.” Italics added. Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. *Wis. Admin. Code, § DCF 101.23(10)(e)*. The levy is not stayed pending an appeal where property is secured through the levy. *§DCF 101.23(10)(c)(3)*.

There is no question this case as to the identity of the debtor. Further, there is no issue in this case as to the amount of the debt.

CONCLUSIONS OF LAW

1. That this appeal is untimely as to the 2010 notice of child care overissuance.
2. That the evidence is not sufficient to demonstrate that this appeal is untimely as to the notice of levy.
3. That the issues for this appeal are limited to the identity of the debtor and the amount of the debt that Petitioner has not demonstrated any basis for questioning either of these, thus there is no basis for remand of this levy.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

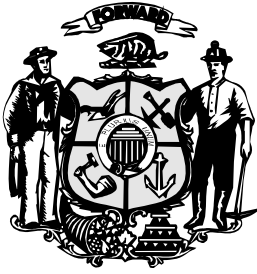
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of January, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 9, 2013.

Milwaukee County Department of Human Services
Public Assistance Collection Unit